

July 10, 2012

Toby Douglas, Director  
Department of Health Care Services  
Sacramento, CA

Re: Draft Initial Plan for Implementing the ACA in California: Transitioning the LIHP to ACA Coverage Options

Consumers Union, the policy and advocacy division of *Consumer Reports*, writes today regarding the Draft Initial Plan for transitioning LIHP enrollees into health coverage under the ACA. We focus our comments on the actual transition process for LIHP enrollees to access ACA health coverage programs no later than January 1, 2014.

We appreciate the enormous logistical challenge of smoothly transitioning the large number of individuals in the LIHPs to the appropriate ACA options in 2014 and are pleased that you are taking the needed timely steps for federal approval of your plan to do so. The success of the transition will be a key test of the functionality of CALHEERS and we want it to succeed as a model for other states. Consumers Union, however, is concerned at the lack of detail provided in the Draft Initial Transition Plan about how the state will provide information to enrollees and implement the actual transition.

We support the §1115 Waiver (STC 23.a.i.) governing the transition plan, which does not permit the State to require individuals to submit a new application before transition to coverage under the ACA Medicaid expansion. We also support the notion that LIHP enrollees' information can be moved to Medicaid and the Exchange, with an opportunity for them to opt-out if they choose not to have their information shared. (We don't imagine many enrollees choosing to opt-out of the transition.) We urge you to create a more detailed transition plan that identifies how the State will communicate with LIHP enrollees, defines the process for LIHP enrollees to opt-out of the transition, articulates the fair information practice principles that support important consumer privacy protections, and provides for more targeted, specific information to those potentially eligible for Exchange coverage.

#### Communication with LIHP Enrollees

The Draft Transition Plan identifies the broad time frame for undertaking transition activities. The notice to LIHP enrollees will be sent as early as January, 2013, however, there is no further information on what will be included in that notice. We believe that there are particular issues that should be addressed in the Transition Plan to ensure consumer protections are built into the notification process and the direct communication with LIHP enrollees. We believe the State should provide further information about the transition notification, including details and dates for actual transfer of information from the LIHP counties to the State programs, deadlines for exercising opt-out rights, etc.

Consumers Union would support additional language for notices to enable LIHP participants to make informed choices about transitioning to Medicaid and/or the Exchange, as follows:

- Clear articulation about the change of program, including a description of the more comprehensive coverage available under Medicaid and/or the Exchange;
- Specific information that alerts LIHP enrollees that they have the ability to opt-out of the transition, that the LIHP program will phase-out and no longer exist after December 31, 2013, and an explanation that is clear that enrollees will be losing health coverage altogether if they opt-out of the transition; and
- A detailed step-by-step explanation of how a LIHP enrollee can opt-out of the transition or decline sharing financial information needed for determining eligibility for Medicaid and/or Exchange programs.

We would encourage the State to articulate the above bullets in the Initial Transition Plan to assure both CMS and stakeholders that these necessary steps will be implemented during the transition.

#### Fair Information Practice Principles

There are important privacy protections that should be incorporated into the Draft Transition Plan to assure LIHP enrollees have access to their shared information and the ability to correct or ameliorate any misinformation. Consumers Union previously has provided recommendations to the State about needed privacy protections (presented at the 1296 stakeholder meeting in April 2012). Consistent with CU's previous recommendations, and as the Transition Plan is implemented and LIHP enrollee information is moved into Medicaid and/or the Exchange, LIHP enrollees should be assured of the following:

- Reasonable means to access their own individually identifiable information collected by DHCS and the Exchange, in a readable form and format, and means to dispute and correct errors in a timely way;
- Prompt access to such information;
- Clear information about how their data will be used or disclosed and how long it will be retained;
- Power to securely designate someone else, such as a family member, caregiver or legal guardian, to make decisions on their behalf;
- Rights to translated materials and access to translators and/or interpreters;
- Timely notice of any changes to individual information received or initiated through Medicaid and/or the Exchange;
- Specific opportunities to exercise consent (as opposed to only broad consent language governing the entire transition), which is written in a clear and concise manner, comprehensible to individuals, including those with cultural, language, economic, educational and health status needs; and
- Confidence that the system is able to track changes and updates to an enrollee's individually identifiable information, including assurances that Assisters (including

both paid and unpaid Assisters) have a unique log-in and can only access an enrollee's personal information with the enrollee's consent.

### Exchange-eligible individuals

For those LIHP enrollees who are above Medicaid income limits, but eligible for advance premium tax credits (APTC) and cost-sharing reductions through the Exchange, in addition to the protections above, there are several additional protections that we recommend be articulated in the Draft Transition Plan, including:

- Communication that after information is shared, the Exchange will follow-up with them to initiate an eligibility determination for Exchange coverage;
- Just-in-time information about the reconciliation process for tax credits, ensuring that LIHP enrollees not be registered for APTCs without some type of real-time warning (or pop-up box for online) that provides information about the repercussions of the reconciliation process and a consent box that ensures that the LIHP enrollee read, understood, and acknowledged the repercussions before proceeding; and
- Information about the exemptions from and penalties for failure to obtain health coverage.

### Additional Issues

In addition to the above, Consumers Union would remind the State of the following additional issues that should be addressed in the Draft Transition Plan:

- Describing in some detail the "established algorithm" that the State will use to place LIHP enrollees in MMCP networks;
- More detailed information about how LIHP enrollees can opt-out of an MMCP network and enroll in a different one, including the steps the enrollee must take, the time frame under which s/he must undertake those steps, and any grievance (or appeal) rights the enrollees have regarding automatic assignments;
- The schedule of implementation activities (page 7) does not include non-MAGI based eligibility determination for LIHP enrollees. We imagine that during the LIHP program, the counties and/or the State has obtained information that may allow some enrollees over income for ACA Medicaid coverage to become eligible for non-MAGI Medicaid based on health status. There should be some mechanism in place to identify those potentially eligible for non-MAGI coverage during July through December 2013; and
- The State and the Exchange should ensure that contracts with UCLA, and any other vendor or consultant assisting with the LIHP transition process, include language that adopts the fair information practice principles required under the ACA regulations.

The State has an unique opportunity to enroll close to 500,000 individuals in ACA coverage programs quickly and easily and ensure a smooth transition to comprehensive health care coverage for these individuals. With further work to spell out the details and incorporate important consumer protections, the State will be well positioned to lead the way in ACA implementation.

We look forward to working with you in this endeavor and are always available to provide more detailed recommendations or assistance in thinking through some of these important implementation goals.

In the meantime, we look forward to receiving a copy of your final Transition Plan when it is submitted to CMS in August 2012.

Thank you.

A handwritten signature in cursive script that reads "Julie Silas". The signature is written in dark ink and is positioned below the "Thank you." text.

Julie Silas  
Senior Policy Analyst

cc: Len Finocchio